

Wagner '201. Finally, the Examiner allowed claims 14-21, and indicated that claims 3-7 would be allowable if re-written in independent form.

Applicant respectfully traverses the Examiner's objections and rejections.

### **I. Objections to the Drawings**

In the previous Office Action, the Examiner objected to the drawings for various reasons. Applicant made the requested changes to the drawings in red ink on the informal drawings and indicated that such changes were attached as Exhibit A to the response mailed May 18, 1998. Applicant's attorney, however, inadvertently failed to submit Exhibit A along with the response. Exhibit A was submitted two (2) days later on May 20, 1998. A copy of the post card received back from the Office acknowledging receipt of Exhibit A is submitted herewith.

### **II. Objections to the Specification**

Through the above amendments to the specification, Applicant has corrected the single remaining objection to the specification set forth in the Office Action. Applicant has also amended the specification to claim the benefit of a provisional patent application that was co-pending at the time the present application was filed.

### **III. Claim Objections and Claim Rejections under 35 U.S.C. § 112**

In the Office Action, the Examiner objected to claims 13 and 27. The Examiner also rejected claims 26-32 as lacking proper antecedent basis. Through the above amendments, Applicant has amended these claims in order to more particularly point out and distinctly define Applicant's claimed invention and to overcome the Examiner's objections and rejections.

#### **IV. Claim Rejections under 35 U.S.C. § 101**

In the Office Action, the Examiner rejected claims 34-51 and 52-55 under § 101 as failing to recite statutory subject matter. The Examiner, however, provided specific suggestions to overcome these rejections. Applicant has followed the Examiner's suggestions and has amended claims 34, 37, 41, 45, 49 and 51, accordingly.

#### **V. Claim Rejections under 35 U.S.C. § 102(b)**

Claims 1, 2, 13, 24, 33, 49 and 50 were rejected under 35 U.S.C. § 102(b), as being anticipated by Wagner '201. In the Office Action, the Examiner asserts that Wagner '201 discloses a principal market maker computer. The Examiner points to Figure 1, element 13, and column 4, lines 3-22, in support of the rejection. Applicant respectfully disagrees.

Nowhere in the Wagner '201 patent is a computer disclosed that automatically maintains a constant bid and offer market for any traded commodity. To the contrary, Wagner '201 simply executes matching equal bids and offers received over a computer trading system. Unlike the claimed invention, Wagner '201 will not automatically and continuously maintain a bid and offer market for a given commodity. A market will only exist in the Wagner '201 system if bids and offers are received from institutional market participants. If no bid or offer is received in the system disclosed in Wagner '201, then no market for such commodity will exist.

At least one novel aspect of Applicant's claimed invention is the adoption and implementation of a market maker computer to be used in the trading of commodities. According to Applicant's invention, a continuous bid/offer stream is provided to institutional market participants for tradable commodities futures. Applicant's claimed invention, as

amended, therefore provides a principal market maker computer to automatically maintain a constant bid and offer market for a given commodity. Neither Wagner '201 nor any other cited reference discloses this unique aspect of Applicant's claimed invention. Nevertheless, to more distinctly define and particularly point out this unique aspect of Applicant's claimed invention, Applicant has amended independent claims 1, 24, 33 and 49.

In view of the above amendments and remarks, Applicant respectfully asserts that claims 1, 2, 13, 24, 33, 49 and 50 are not anticipated by Wagner '201.

#### **VI. Claim Rejections under 35 U.S.C. § 103(a)**

Finally, Claims 8-12 were rejected under 35 U.S.C. § 103(a), as being unpatentable over Wagner '201. According to the Examiner, Wagner '201 does not teach connecting a trading system to various networks. The Examiner, however, takes official notice that the recited trading references are old and well known, and that it would have been obvious to one having ordinary skill in the art at the time the invention was made to link the Wagner '201 system to one or more trading networks. Applicant respectfully asserts that, even if the Examiner were correct (which Applicant does not admit), the proposed combination would not yield Applicant's claimed invention.

Claims 8-12 all depend from independent claim 1. For the reasons set forth above, Wagner '201 is missing at least the principal market maker computer element recited in claim 1. As a result, one of ordinary skill in the art would still not achieve Applicant's claimed invention with merely the addition of the trading networks mentioned in the Office Action. Accordingly, claims 8-12 of Applicant's claimed invention are not rendered obvious over Wagner '201.

## VII. Conclusion

In view of the above amendments and remarks, Applicant submits that this case is in condition for allowance. If the Examiner feels that a telephone interview would be helpful in resolving any remaining issues, the Examiner is respectfully invited to contact Applicant's undersigned attorney.

Respectfully submitted,

Dated: November 17, 1998

By: 

Jonathan E. Retsky  
Registration No. 34,415

Attorney for Applicant

BRINKS HOFER GILSON & LIONE  
P.O. Box 10395  
Chicago, Illinois 60610  
(312) 321-4200